

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
NELSON FOOD MART, INC.
UST Facility at 40 Front Street, Lovington, VA
Facility Identification No. 6019233

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and Nelson Food Mart, Inc. to resolve certain violations of the State Water Control Law and regulations at Nelson Food Mart's Underground Storage Tank Facility located at 40 Front Street in Lovington, Nelson County, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. ABoard≡ means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. ACode≡ means the Code of Virginia (1950), as amended.
3. AUST≡ means underground storage tank.
4. "Nelson Food Mart" means Nelson Food Mart, Inc., a Virginia corporation, active and in good standing and the UST owner within the meaning of Virginia Code § 62.1-44.34:8.
5. ADepartment≡ or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.

6. ADirector≡ means the Director of the Department of Environmental Quality.
7. AFacility≡ means the retail gasoline station and USTs owned and operated by Nelson Food Mart located at 40 Front Street, Lovingsston, Nelson County, Virginia. The Facility=s USTs are further identified by UST numbers: 1 & 2.
8. AOrder≡ means this document, also known as a Consent Special Order.
9. ARegional Office≡ means the Valley Regional Office of the Department.
10. ARegulation≡ means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, corrosion protection and release detection requirements.
11. “STI-P3 tank” means a UST certified by the Steel Tank Institute to have three different methods of corrosion protection.
12. “Form 7530” means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-50, required that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Nelson Food Mart is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On December 6, 1999, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. UST notification information submitted on Form 7530 was incorrect and did not include the Facility’s current address in apparent violation of 9 VAC 25-580-70 ¶A.
 - b. Release detection was not being performed on the USTs #1 & 2 in apparent violation of 9 VAC 25-580-140 ¶1.

- c. Release detection was not being performed on the piping associated with USTs #1 & 2 in apparent violation of 9 VAC 25-580-140 ¶2.
- d. Facility maintenance and compliance records were not readily available for review by DEQ staff in apparent violation of 9 VAC 25-580-120 ¶3.
- e. Financial assurance documentation had not been submitted to the DEQ in apparent violation of 9 VAC 25-590-10 *et seq.*

As a result of this formal inspection, DEQ staff sent a Warning Letter (No. 02-02-VRO-9) to Nelson Food Mart on February 11, 2002, for these apparent violations of the Regulations. The letter requested that Nelson Food Mart respond by February 25, 2002, and included a copy of the formal inspection results, detailing the apparent violations noted above.

- 4. On February 25, 2002, DEQ staff received a written response from Nelson Food Mart indicating its intention to comply with the regulation within 90 days of the date of the letter.
- 5. From the letter referenced in item #4, Nelson Food Mart informed DEQ staff that it intended to comply with the Regulation by May 25, 2002. It failed to do so. Accordingly, DEQ staff sent a letter to Nelson Food Mart on August 25, 2003, requesting that they bring the facility into compliance with the Regulation within fifteen days. Copies of the original Warning Letter and a summary of the outstanding violations were included in the letter.
- 6. On September 12, 2003, DEQ staff received copies of documentation confirming the material of construction of the USTs as being STI-P3 tanks, thus verifying certain information supplied on the July 7, 1994 Form 7530.
- 7. On November 5, 2003, DEQ staff offered Nelson Food Mart the opportunity to enter into a Letter of Agreement. After conferring with Nelson Food Mart, DEQ staff prepared a Letter of Agreement which required Nelson Food Mart to return to compliance with the Regulations by March 31, 2004. Nelson Food Mart failed to sign and return the Letter of Agreement by November 21, 2003, as requested by DEQ.
- 8. On January 6, 2004, DEQ staff issued NOV No. 04-01-VRO-1 to Nelson Food Mart, for the apparent continuing violation of the Regulations 9 VAC 25-580-50 (Performance Standards for New UST systems) on USTs #1 & 2; for apparent violations of 9 VAC 25-580-70 (Notification requirements); 9 VAC 25-580-140 (Requirements for petroleum UST systems); 9 VAC 25-580-120 (Reporting and Record keeping); and 9 VAC 25-

590-10 *et seq.* (Financial Responsibility requirements). The NOV requested that Nelson Food Mart respond to the Department by January 16, 2004.

9. On March 11, 2004, DEQ staff met with Nelson Food Mart to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations. During the meeting Nelson Food Mart submitted an amended Form 7530 but failed to provide release detection records or financial responsibility documentation. As a result, DEQ staff are seeking compliance with the Regulation through performance of the actions detailed in Appendix A.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders Nelson Food Mart and Nelson Food Mart agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Nelson Food Mart shall perform the actions described in Appendix A to the Order.
2. Nelson Food Mart shall pay a civil charge of \$2,400.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to ATreasurer of the Commonwealth of Virginia and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

3. Nelson Food Mart shall also include its Federal Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Nelson Food Mart, for good cause shown by Nelson Food Mart, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently

discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order.

Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, Nelson Food Mart admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Nelson Food Mart consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Nelson Food Mart declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Nelson Food Mart to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Nelson Food Mart shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Nelson Food Mart must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Nelson Food Mart shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;

- b. The projected duration of such delay or noncompliance;
- c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

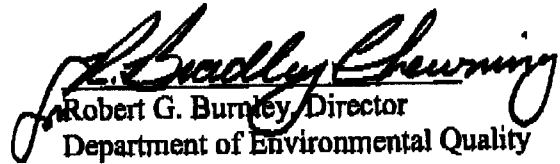
Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Nelson Food Mart intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Nelson Food Mart. Notwithstanding the foregoing, Nelson Food Mart agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. Nelson Food Mart petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Nelson Food Mart has satisfied all the requirements of the Order is a Acase decision within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to Nelson Food Mart.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Nelson Food Mart from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Nelson Food Mart voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21 day of June, 2004.


Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Nelson Food Mart:

Date: 4/10/04 By: Cleve Price
Mr. Cleve M. Price
Title: President

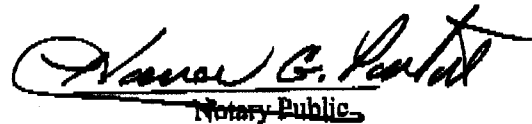
Commonwealth of Virginia, City/County of Nelson

The foregoing instrument was acknowledged before me this 10 day of April, 2004, by

Mr. Cleve M. Price.

4/10/04
Date

My commission expires:


Notary Public
Magistrate

Appendix A
Nelson Food Mart, Inc.
UST Facility at 40 Front Street, Lovington, VA

For USTs # 1 & 2 Nelson Food Mart shall:

- A. By April 30, 2004:
 - 1. Submit a copy of a contract for the performance of Statistical Inventory Reconciliation (SIR) as a release detection method for the tanks and a contract for the performance of cathodic protection system testing.
 - 2. Have performed a valid method of tank & line tightness testing.
 - 3. Submit complete and accurate Financial Responsibility documentation.
- B. By May 28, 2004:
 - 1. Submit copies of valid, passing tank & line tightness and cathodic protection system tests.
- C. By June 15, 2004:
 - 1. Submit a copy of passing release detection records for the month of May 2004.
- D. By July 15, 2004:
 - 1. Submit a copy of passing release detection records for the month of June 2004.
- E. By August 15, 2004:
 - 1. Submit a copy of passing release detection records for the month of July 2004.